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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,432	08/28/2003	Sylvana Miceli	671280.6	7244
27162	7590	12/02/2005	EXAMINER	
CARELLA, BYRNE, BAIN, GILFILLAN, CECCHI, STEWART & OLSTEIN 5 BECKER FARM ROAD ROSELAND, NJ 07068			MAI, HUY KIM	
			ART UNIT	PAPER NUMBER
			2873	

DATE MAILED: 12/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/650,432

Applicant(s)

MICELI, SYLVANA

Examiner

Huy K. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Allowable Subject Matter***

1. Prosecution on the merits of this application is reopened on claims 1-11 considered unpatentable for the reasons indicated below:

Claims 1 and 10 can read over the patent no.: 2,374,171 issued to Breuker Jr.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,10 are rejected under 35 U.S.C. 102(b) as being anticipated by Breuker, Jr..

The limitations in claim 1 are shown in Breuker, Jr.'s Figs. 1-4, pages 1-2. Breuker, Jr. discloses a pair of eyeglasses comprising a frame 12 having a pair of lens supports for receiving a pair of eyeglass lenses 17 in a vertical plane; a pair of temples 14, each said temple being hingedly secured to a respective lens support near a bottom of said frame and extending in an upwardly angled direction from said frame; and a nose piece 11,13 on said frame between said lens supports for resting on a nose of a user with said lens supports spaced from the eyes of the user wherein the portion 18 of the temple 14 has no obstacle to the user's eyes whereby the user can access to eyes. The recitations "to permit access to the eyes of the user laterally of said frame for the application of makeup" are intended use since there is no obstacle of the portion 18 on the side of the wearer is capable of performing the intended use.

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Regarding claim 10, the recitations in claim 10 are similar to those in claim 1, except for the lenses of selective diopter. Breuker, Jr. discloses the corrective or prescriptive character of the lenses used will be as required by the particular individual. Thus the Breuker, Jr.'s lenses inherently include selective diopter for each particular individual.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breuker, Jr. in view of Kneier (3,840,294).

The recitations in claims 2 and 11 are shown in the Breuker, Jr. reference as discussed above, except for the shape of the lens and/or lens supports having a greater height than width thereof. Kneier discloses a pair of eyeglasses for the application of makeup wherein the lens has a greater height than width thereof. Therefore, it would have been obvious at the time the invention was made to those skilled in the art to modify the Breuker, Jr.'s device in light of Kneier's teachings by forming the lens has a greater height than width thereof for the same purpose disclosed by Kneier as well the same intended use in the Breuker, Jr. references as discussed above.

6. Claims 3-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breuker, Jr. in view of Hirschman (5,483,303).

Regarding claims 3,4, Breuker, Jr. discloses the claimed invention as discussed above, except for the curved end piece being adjustable as claimed. Hirschman, in Fig. 3, discloses a

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pair of eyeglasses wherein the curved end piece 40 is adjustable for the purposes of proper fit the eyeglasses on the user' ear. Since Breuker, Jr. and Hirschman are both from the same filed of endeavor, the purpose disclosed by Hirschman would have been recognized in the pertinent art of Breuker, Jr.. It would have been obvious at the time the invention was made to those having ordinary skill in the art to modify the Breuker, Jr.'s curved end piece by forming an adjustable curved end piece as disclosed by Hirschman for the purpose of proper fit the eyeglasses on the user' ear. Such a modification would not change the scope of the invention in the Breuker, Jr. reference.

Regarding claims 6,7, the recited limitations in claims 6,7 are similar to those in claims 3,4. The above discussions applied to claims 3,4 would apply to claims 6,7. Breuker, Jr. is silent in discussion the hinged axis of the rectilinear portion 18 related to the temple arm 15. It appears in Figs. 1,5 that the hinged axis is vertical or near vertical. It would have been obvious to an artisan to vary the hinged axis in the Breuker, Jr.'s device to a vertical axis as a matter of engineering choice so as the temple hingedly secured to the lens support between the open and close positions. Such a modification also would not change the scope of the invention in the Breuker, Jr. reference.

Regarding claims 5,8,9, absence in showing the new or unobvious results and the reasons why the mounting block either extends laterally or transversely from the respectively lens support, it would have been an obvious engineering choice to form such a mounting block extends laterally or transversely from the respectively lens support so as hingedly secured to the lens support between the open and close positions. Such a modification also would not change the scope of the invention in the Breuker, Jr. reference.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy Mai whose telephone number is (571) 272-2334. The examiner can normally be reached on M-F (8:00 a.m.-4:30 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky L. Mack can be reached on (571) 272-2333. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1562.



Huy Mai  
Primary Examiner  
Art Unit 2873

HKM/  
November 8, 2005